THE

LAW AND PRACTICE

UNDER THE ACT FOR

QUIETING TITLES

TO

REAL ESTATE

IN

UPPER CANADA.

BY

ROBERT J. TURNER, ESQ.,

BARRISTER-AT-LAW, REFEREE OF TITLES.

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The Judges of the Court of Chancery having deemed it advisable, for the purpose of enabling the public more conveniently and more extensively to avail themselves of the benefit of the "Act for the Quieting Titles to Real Estate in Upper Canada," to appoint the several Deputy Masters of the Court Referees of Title, it has struck me that it would be useful to the profession and to the several Masters, who, by the orders now about to be issued, will be called upon to assist in carrying it into effect, to offer to them the following little treatise upon the steps to be taken in obtaining from the Court the Deed or Certificate, which will effectually ratify the Title and render it as sound and perfect as the original Letters Patent, by which the land is granted by the Crown.

I have appended the several forms which, the practice having fallen to me as entirely new with no precedents to guide me, I framed on my first appointment as Referee, and to which where necessary I have appended notes to guide the profession, as being less troublesome by way of reference and more likely to draw their attention than by making the necessary requisitions part of

the Text, merely shortly stating therein the duties of the Solicitor, and impressing upon him the necessity of extreme caution in complying with the several forms, not only as a means of saving expense to his client, but of lessening his own labour and that of the Referee, on whom will devolve the care of investigating his deeds and testing the facts which he may adduce in proof of the Title.

Before the first step, the presentation of the petition, be taken, it behoves the Solicitor carefully and thoroughly to investigate the Title and the proofs which can be adduced in support of it, and if on such investigation he should discover an insurmountable defect, or that the proofs of the Title on any material point should be unattainable, he should, on no account, allow the petition to be presented, as the registration of the petition, required by the Act, unfollowed by a certificate, may create a cloud on the Title.

The Title having been investigated by the Solicitor, and found to be perfect, or that it is capable of being made so, the Solicitor may prepare the petition, the form of which is set forth in the Act, and should be strictly observed, and be varied only as demanded by the particular circumstances of the case; and here I may remark, that, hitherto, in many instances, the profession have not been sufficiently careful to state the incumbrances affecting the property, or such of them as are not intended to be removed, particularly mortgages, dowers of widows, tenancy by the curtesy, and any other charges existing at the time of the presentation of the petition. And great particularity is required on this head, lest it may happen that from the omission in the petition of the facts relating to a mortgage on the estate, the Certificate may be granted subject to the

mortgage, where the only object of the petition may be to declare the title free from it, it having been discharged under circumstances which rendered it impossible to obtain a reconveyance of the estate, or a statutable discharge of the mortgage.

This petition is sent or delivered to the Inspector to be entered, if the reference be to a local Master; it is then filed with the Registrar, and he will transmit it to the Referee.

The particulars required to establish the title are then completed by the Solicitor, and when completed, and not before, are to be delivered to the local Master, or other Referee. There is no use whatever in sending or delivering some, before all are ready.

With this view, after the petition is filed with the Registrar:

The new Orders point out the steps to be taken on the filing of the petition; and on perusing the form of the petition (Form No. 1), with the notes attached to it, the Solicitor will find ample instructions on the course to be pursued previous to his taking proceedings.

The next step is the preparation of the affidavit of the petitioner, to accompany the petition.

In this the petitioner must verify the several facts stated in his petition, and he must also state that the several deeds and evidences of title which he produces, and of which a schedule is to be annexed to the affidavit, are all the deeds and evidences of title affecting the land in question, in his custody, possession, or power; and he must state, if within his knowledge, where and in whose possession any other deeds, papers, or writings may be; and if he cannot do so, he must state that he has made or caused enquiry to be made, and of whom, where they may be. The affidavit should also set forth

the several facts referred to in the Form No. 2, hereunto appended.

The Solicitor should next give his own certificate that he has investigated the title, and that he has conversed with the petitioner upon the subject of it, and of his, the petitioner's, affidavit; that he believes the affidavit to be true, and the title to be as stated therein.

The Solicitor must also obtain the necessary affidavits, proving possession of the land to have gone with the ownership, as stated in the deeds, the heirship of parties claiming by descent, the deaths of parties who would be entitled to dower, or tenancy by the curtesy, that the land is not chargeable with crown debts, except such, if any, as are mentioned in the affidavit.

(Forms of these several affidavits are hereinafter set forth).

Having all his proofs prepared, the Solicitor is then, *and not before*, to carry them to the Referee of Titles, with such other papers as are required by section 5 of the Statute.

All the title deeds, if any, evidences of title relating to the land, that are in the possession or power of the petitioner.

A certified copy of the memorials of all other Registered instruments affecting the title, up to the time of registering the certificate of the petition above mentioned (these certified copies must include the affidavits of execution, filed on the registration of the several memorials), and where, from the description of the property, the Registrar is unable to certify that such memorials are all that affect the land, the Referee should require that a Surveyor, or the Solicitor if he feel himself duly qualified, should examine the property, and, after examining the Register, he should make an affida-

vit that the memorials produced are all that affect the land.

A list by the Registrar of all deeds and instruments affecting the lands which have been registered, including any Bills or proceedings in Chancery, or in any County Court, on its equity side, if any such be registered, and also including the certificate as to the petition to quiet the title.

A concise statement of such facts as are necessary to make out the title, and which do not appear in the documents produced, must be brought in, but no abstract of title will be required unless on special grounds.

Among the facts last above mentioned, the following will be necessary in every case:

That all taxes theretofore assessed on the lot have been paid and satisfied, up to the first day of January next preceding the filing of the petition;

That there are no executions in the Sheriff's office against any person having an interest in the land;

That the land has not been sold by the Sheriff for taxes, within eighteen months preceding the filing of the petition, or under execution within six months previous thereto;

Proofs of any facts requiring proof to make out the title, unless dispensed with until a later stage of the investigation (among these proofs will be the facts set forth in the concise statement).

The following general observations will, I feel, be useful to all parties, whether Solicitors, Referees, or Inspectors, and be the means of saving labour, and preventing loss of time.

When the deeds are lost or cannot be produced, the same evidence is required of their loss and contents as is requisite on a trial at law, or in a suit in Chancery, to let in secondary evidence.

Every affidavit to be used in evidence where the deponent speaks as to his knowledge and belief, should state whence his knowledge is derived.

Where the title is derived through a Sheriff's Sale on execution, the affidavit should give the volume and page of the *Canada Gazette* in which the advertisements appear, and the names and dates of the local newspapers in which they were inserted; and where it is derived through a Sheriff's Sale for Taxes, the affidavit must shew that all the requirements of the Consolidated Statute of Upper Canada, 22 Vic., cap. 25, sections 125 to 131, pp. 675, 676, have been strictly complied with. In such case, the Referee need not require the production of the Treasurer's Warrant, but he may be satisfied with the affidavit of a competent person who has examined it, and who states sufficient to satisfy the Referee that it was in full compliance with the Statute.

With respect to the Crown debts, they are to be ascertained by search in the office of the Clerk of the Crown in Toronto, and the affidavit must shew that the present owner is not, and that none of the persons (naming them) who had previously been interested in the land, were, while so interested, debtors to the Crown, and must state what Crown debts, if any, affect the property.

The form of this affidavit (see Appendix) must be strictly complied with.

Any party possessing information necessary for the applicant, and unwilling to make affidavit, may be served with a *subpœna ad test*, and be examined *vivâ voce* by the Referee.

It will save time, trouble, and expense, when the Solicitor sees, and he is required in all cases to do so, that all the requisite proofs are complete in the first

instance; but if through oversight any thing should be omitted or defective, an opportunity of supplying it should be afforded by the Referee.

With respect to the evidence, it may, as a general rule, be observed that it must include as well what is necessary to be produced by a vendor to a purchaser, on a strict investigation of title, as what a purchaser's Solicitor should satisfy himself of by search and enquiry according to the principles laid down for these purposes in the English books on Conveyancing, which are hereafter referred to under the head of "Proofs."

As a general rule, where there is ground for doubt as to whether some person other than the petitioner may not in some way be interested or entitled, notice should be given to such person; and so, also, where the title is not a clear paper title, proved by production of the original instruments, as in Court.

Thus, if the applicant's title rest on the Statute of Limitations, notice should be given to the party said to be barred, as the effect of the Statute may be defeated by acknowledgment of title or otherwise.

So, also, in case secondary evidence be given by the memorial and proof of execution, and the memorial is not in full, and not signed by the grantor, notice should be given to the grantee.

Considering also the difficulty as to sales for taxes, notice should be given to the person who but for the sale would have been owner, and the same in cases of execution. So, also, as a general rule, where there is a conveyance from a person on registry, through whom the applicant does not claim, and who on the registry has no apparent title, notice should be given to the grantee.

As to notice, however, the Referee must exercise his

judgment, avoiding, on the one hand, unnecessary expense to the applicant, and on the other, the doing injustice to some person possibly entitled.

Where the Referee finds that a good title is shewn, and can be verified, he may issue the advertisement for publication in the *Gazette* and the local newspapers, (see Appendix), and may direct notice to be served on any persons whom, from the state of the title, he may think it expedient to notify (see Appendix).

The Referee, being satisfied with the title shewn, is to transmit the papers, with his signature approving the title, to the Inspector whose name is endorsed on the petition, who is to peruse the several papers, and consider the effect of the same, and any accompanying observations which the Referee may deem it advisable to make upon them; and if the Inspector concurs with the Referee that a good title has been proved, he will obtain the sanction of the Judge, and the certificate will be prepared by him and delivered to the Registrar of the Court, that it may be entered, and by him forwarded, after entry, to the Solicitor for the petitioner, the fees for such entry having been first duly paid; but should the Inspector not concur in opinion with the Referee that a good title has been made, or that certain requisites still remain to be supplied, the Inspector will communicate fully with the Referee or the Solicitor, and the certificate will be withheld until those requisites be supplied, or until it is ascertained that the title cannot be perfected, when the Inspector will communicate his decision, or file a report or certificate that the certificate of title is refused.

These observations apply to titles where there is no counter claim, and the title is not disputed.

The contestant having filed an adverse claim, verified

by affidavit, and complied with the requisitions in the 19th and 20th sections of the Statute, the petitioner, if the contestant do not take an appointment from the Referee to proceed thereon, should obtain a warrant from the Referee, entitled, "In the matter of lot —, &c. Between A. B., claimant, and C. D., contestant," and which is to be underwritten, "at which time the Master will lay down the course of proceeding, and appoint a day for the claimant to proceed in the consideration of his title, and for the contestant at the same time to bring in and proceed upon his objections thereto."

At the day named for the purpose, the necessary evidence is to be given, and the questions between the parties argued as at Nisi Prius, or on a hearing by a Judge in Equity, on circuit. Partial descriptions, or the allowing evidence to be given piecemeal, are by all means to be avoided, as causing delay, expense, and trouble, and as being contrary to the whole spirit of the Act; one hearing should be sufficient in every case.

The Masters have the same power in proceeding under the Act as in all other matters.

On receiving the Referee's finding, the Inspector will prepare a report to the Court, finding that the title is either good or the reverse, shortly stating the points which arose upon it, and giving his opinion that the certificate should or should not be granted, as the case may be.

This report becomes confirmed in fourteen days, if not appealed against, and the Inspector then proceeds to take the judgment of the Judge upon the title, and the certificate is either granted, or the refusal of the Referee to grant it stands confirmed.

If, however, the defeated party choose to appeal, the appeal is heard in the same way as an appeal against

the Master's report, in proceedings in Equity, and the decision of the Judges may be appealed against and carried to the Court of Appeal.

I have subjoined for the use of the Referees an analysis of a simple title, being the manner in which I bring the title concisely under my eye—a plan which I find very useful, and which I first saw when a pupil in the chambers of an eminent English conveyancer, and have always used in a long course of practice. It is more condensed than in England, from the fact that in English titles there are almost invariably complications arising from terms and trusts, seldom in use in this country.

When the Master has investigated the title, and has satisfied himself fully thereon, he should send a memorandum of his finding to the petitioner or his Solicitor. And I have prepared a form, No. —, shewing the nature of such memorandum.

I have subjoined the letter addressed by the Hon. Mr. V. C. Mowat to the then, and still, Attorney-General, Sir John A. Macdonald, in which the learned Judge has shewn the object of the Act, and the advantages to be derived by a good and careful administration of it. The loose system of conveyancing which prevailed in the Province until lately, and the effects of which are now beginning to be felt, has left many titles to large properties so unsound as materially to diminish their value, and it required a strong and effective measure to correct the errors which have crept in, and to render property, as it ought to be, as easily transferrable as any article of trade. A certificate of title granted under the Statute will have this effect; and any party availing himself of it, and his family succeeding him, will have

reason to feel grateful to its author, for a substantial benefit placed within his reach.

It will be a source of much satisfaction to me if the few and scanty remarks I have made should be serviceable to the profession, and be the means of making the practice under an Act so highly beneficial to the landholders of the province, easily to be understood, and the advantages of the Act as easily to be obtained.

A LETTER ON THE BILL FOR QUIETING TITLES TO REAL ESTATE IN UPPER CANADA, ADDRESSED TO THE HON. JOHN A. MACDONALD, ATTORNEY-GENERAL FOR UPPER CANADA, BY THE HON. OLIVER MOWAT, LATELY M.P.P. FOR SOUTH ONTARIO.

The leading objects of the Bill are to give greater certainty to Titles; to facilitate the proof of them; to expedite transfers; and generally to render dealing with real property more simple and less expensive. Everybody is interested in these important objects, for everybody either owns property now, or hopes to do so some day.

The insecurity of Titles, which it is the purpose of the Bill to remove, has often been the occasion of the greatest possible hardship and suffering to individuals and families; and facility of transferring real estate, which it is the intention of the Bill to promote, is of the greatest importance to a free country, and particularly to a young country, like Canada.

The method, by which the Bill proposes to accomplish its design, is, by rendering Titles indefeasible, whenever they have been submitted, with this special object, to the ordeal of a judicial investigation, and their validity has in this way been ascertained. This investigation is not to be compulsory on owners, but the proposal is, that an owner shall have the right to have the investigation made, if he chooses, and though there may be no adverse claimant. On his establishing his Title, after due inquiry and every precaution by the Court against error or fraud, it is proposed that the

owner shall receive a Certificate of Title; and that such Certificate shall operate as a new starting point in his title, and shall be conclusive at Law and in Equity, against all the world, that at the time mentioned in the Certificate the land belonged to the person it names. Thenceforward, when the owner sells or mortgages, an intending purchaser or mortgagee will only have to search for conveyances or incumbrances subsequent to the Certificate—the work of perhaps five minutes or less.

As the Law stands now, an owner may have an undisputed and indisputable Title; it may be easy for him to-day to prove every deed and every fact on which his Title depends; but a dozen years hence the case may be quite different. The proof may then be difficult, expensive, and perhaps impossible; witnesses, whose testimony he needs, may be dead; or if alive, it may be impossible to find them; or if found, they may be where the process of our Courts cannot reach them, and where, therefore, their evidence cannot be compelled. Or if these difficulties do not arise, others may. In a dozen years, witnesses may forget important facts; or some of the papers, on which the Title depends, may be mislaid or lost, and there may be the greatest possible trouble in tracing them, or proving, by satisfactory evidence, their loss and their contents. The Bill proposes to give to every owner the right, if he chooses, of producing his proofs now; and, if they are clear and satisfactory, of being relieved forever afterwards from the necessity of producing them.

When an owner has occasion to prove his Title at law, this only gives him the opportunity of showing the legal title. An action at law seldom touches the question of the equitable Title, or of equitable interests in

the property; and whatever such an action decides is binding on the parties to the suit only, and affects no one else. The evidence must be forthcoming, and may have to be repeated, in every suit with everyone, who, at any future time, sets up a claim to the property.

Then, again, many of the flaws, on which a Title is defeated, are such as, if known in time, could be easily and cheaply remedied; but are beyond remedy when the property becomes valuable enough to tempt the cupidity of those who are entitled to take advantage of the defects that are discovered; or the original party to the transaction may then be dead and his heirs may be minors or needy, and for these or other reasons unable or unwilling to correct or overlook the mistakes or omissions which render the Title defective.

All sorts of questions have to be considered in looking into a Title, prior to making a purchase or accepting a mortgage. Are the deeds and wills, through which the title is traced, genuine Instruments? or have any of them been forged or tampered with? Were they all duly executed? Have all the forms required by the Statute been observed in the registration of them? Were all requirements of the Acts affecting married women complied with? Did every testator possess the requisite mental capacity at the time of signing his Will? Was it read over to him? Did the witnesses subscribe their names in the presence of one another? Even in regard to these ordinary questions that occur on almost every Title, examples of misinformation and misfortune have not been wanting.

But sometimes much more difficult questions than these have to be determined, as to the construction of wills. Occasionally, difficulties of this class entirely escape attention when a Title is investigated, and at

other times, a wrong conclusion is come to in reference to them.

Then, questions of identity, and questions relating to possible claims for dower, have sometimes been overlooked by former purchasers, and involve considerable perplexity in subsequent investigations.

Again, persons dealt with as legitimate, sometimes turn out not to have been legitimate; or a person who has conveyed as eldest son and heir under the old law, is subsequently ascertained not to have been eldest son and heir. So, persons, supposed to be all the children and co-heirs under the new law, may only be some of the children; persons may not be dead, who were supposed to be dead; or persons may not have been dead, or not have been born, at the dates supposed, and on which important rights depend; persons may have been aliens, who were supposed to be British subjects; or may have been British subjects, who were supposed to be aliens; and persons may have been absent from the country, when the Statutes of Limitations were supposed to have commenced running against them, or may have been in the Province before the Statutes were supposed to have begun their operation in barring their rights.

There are even some causes of difficulty, delay and expense, in the case of Canadian Titles, which do not exist to the same extent in England.

Thus, we have not hitherto had any complete system for the registration of births, deaths, and marriages, and the want of any has created much inconvenience.

Again, our population is less stationary than that of Great Britain, or of the old countries of Europe. A much smaller proportion of our people than is the case in an old country, remain permanently in one place;

and a much larger proportion, after being concerned in the ownership of land, or being witnesses to transactions affecting the ownership, leave the part of the country where they were known at the time, and perhaps leave the country altogether. Native Canadians, or those who have lived for a time here, are to be found in British Columbia, Australia, New Zealand, and probably every State of the American Republic. The difficulty, from this cause alone, of tracing witnesses or former owners, and of ascertaining and proving the death of heirs and devisees, is sometimes found to be very serious.

Then, again, Canadian Titles have, in many instances, to be traced through persons residing in Great Britain; through Deeds and Wills executed there; and through heirs who were born there, and who married and died there.

So, from time to time, it happens that births, deaths, and marriages which have taken place in the various States of the American Republic, or in the other British Provinces on this Continent, or in Australia, or in the countries of Continental Europe, form essential links in a Title. It is obvious that the difficulty of searching for such facts, and then of establishing them, must sometimes be very great, even when the events are comparatively recent; but, when they occurred many years ago, the difficulty may amount to an impossibility. Every Title, depending on such events, becomes less safe with every year that passes; and, as the law stands now, no reasonable caution, and no moderate expense, can make such a Title entirely secure.

Again, in this country large blocks of farming land often depend on a single Title; or a farm lot is, in the formation of our cities, towns and villages, divided into

building lots; and a flaw in the Title of one of those who owned the property before the division of it, destroys the Title, not of one person only, or of one family only, but of many persons and many families.

It often happens, too, that the original Title is, in such cases, less carefully examined than if there had been no subdivision, and one person was buying all. Parties appear to think that a weak Title acquires strength by the number of persons who hold by it; or everybody assumes that his neighbour has examined the Title and found it correct, and he trusts to this supposed investigation, in order to avoid the expense of an independent investigation of his own. Were there an easy method for obtaining an indefeasible Title, no one would think of sub-dividing his land without first obtaining a Certificate of Title.

Our Registry law has, beyond all controversy, been of immense advantage to the country; and yet, in regard to any of the questions I have spoken of, it cannot be said to afford any protection whatever; we need something to supplement its provisions before our Titles can have the reliability which it is very desirable they should possess. The Registry law, in fact, provides for but one source of danger to a purchaser, namely unknown conveyances affecting the property. It affords little or no aid in ascertaining the validity of conveyances, the proper construction of deeds and wills, or any events affecting Title, otherwise than by written instruments; or in supplying the future proof of such events. These things may be of greater moment to an intending purchaser than the possibility of there being some Deeds affecting the property of which, but for the Registry law, he would not have known. In fact our people have been in the habit of trusting too much to

the Registry, and have in consequence neglected to preserve their Deeds as carefully as prudence required. The Registry law has not hitherto required a memorial of the whole Deed to be registered; * and the Deed may, consequently, have contained conditions, provisions, and trusts, of which the memorial gives no information. All that the Statute requires the memorial to state is, the date of the Deed, the names of the parties and of the witnesses, and the description of the property. Even the estate or interest conveyed need not be mentioned. There may, therefore, be an interest under a Registered Deed which does not appear in the memorial; and a man may have an interest as (for example) a mortgagor, remainder man, reversioner, or cestui qui trust, without any intimation of this being given by the memorial. Mortgages have often been registered as absolute conveyances. If the new Registry Law which the Government has introduced should prevent this method of registering instruments for the future, the change will have no effect on past transactions.

It is a further serious inconvenience, connected with our existing system, that if a purchase is effected, or a loan granted after an investigation which satisfies the Solicitor employed that the Title is good, the whole investigation has to be gone over again upon every fresh transaction in reference to the property; and a Title that was satisfactory to one lawyer may not be satisfactory to another; as, among lawyers, there are all degrees of professional skill and knowledge, and all degrees of prudence and caution, as well as of experience. Be-

* The late Registry Act, 29 Vic. chap. 24, sec. 35, passed after this letter was written, requires the registration of a full copy.

sides, the ablest and most cautious lawyer may occasionally make a slip, or overlook a defect, which an inferior man may happen to detect. Sometimes, therefore, one solicitor finds it his duty to reject a Title, which another solicitor has examined and passed; and this is the case not only in Canada, but in England also, where conveyancing is a distinct branch of professional practice, and has received a degree of careful attention which it is not possible for general practitioners in Canada to give to it.

The desirableness of such a measure as you have brought in, and of there being no delay in passing it, further appears from the obvious fact, that, every year, our Titles are becoming more and more complicated, by sales, mortgages, wills, and settlements, as well as by deaths, marriages, births, and all other events affecting Titles. Every instrument that is executed, every transaction that takes place, every event that affects the ownership, increases the evil; for, the more complicated a Title is, the more numerous the links in the chain are, the greater is the chance of a mistake being made in advising upon it, the greater the chance of there being some flaw which it may be difficult or impossible at the time to detect, and the greater the chance of the proofs, necessary to establish the Title, being lost, or, for some reason, not obtainable when needed. Even the mere lapse of time, until it is long enough to give a title by possession, but serves to enhance the danger, through the death of witnesses, or their forgetfulness or mis-recollection of facts, and other causes. With time, property is increasing in value; the importance of the Title being unimpeachable is augmenting; and yet, with time, until the period of prescription is actually

reached, come increased complication and increased danger.

Property more frequently changes hands in Cities and Towns, than in the Country; and, at present, the evils, which the Bill is designed to remove, are greater in the former, than in the latter. For the same reason, they are greater in those parts of the country which have been long settled, than in those in which the lands have but recently been patented. Indeed, some conveyancers of great experience have expressed the opinion that, unless a remedy is found, there will not, in a few years, be many marketable Titles in this part of the country. The evil is certainly increasing, and must increase, everywhere, until our Titles become as complicated, and the investigation of them becomes as expensive, as in England itself. There, the investigation usually occupies months; and it appears from our law books that ten years, and even more, have sometimes been spent in making out a Title. Occasionally, also, the expense has nearly equalled the purchase money; one instance is mentioned by Lord St. Leonards in which a Vendor gave the property to a purchaser for nothing, on condition of the purchaser's relieving him from one part of the expenses of the investigation, namely, that of furnishing copies of the Title Deeds. On the other hand, the earlier in a Country's history that some system is adopted for giving certainty to Titles, the easier is the task, and the more effectual are the means which it is practicable to adopt.

The truth is, that under the English System (which is also ours), there are, in a larger number of cases than I would like to designate, no means by which any one, when he buys a piece of property (unless he buys from the Crown), can be absolutely certain that he is getting

a good Title. Even if his Grantor was the Patentee, he may not be perfectly safe, for there may have been a prior patent of the same lot to another person, or the Patent to the Grantor may have been issued through some fraud or mistake which, on just grounds, may invalidate it. So, a sale in Chancery is only enforced if the Title on investigation appears good; but even this investigation, as the law now stands, does not give perfect security, and in England there are in the books instances of a Title, obtained under a Chancery sale, being afterwards successfully impeached from some unexpected quarter.

I think you will agree with me that it is specially important with us, that means should be adopted to give the greatest practicable certainty and simplicity to our Titles, because Immigrants and others are apt to take on trust the validity of the Title of the apparent owner of the property, especially if he appears to be a respectable man, and are unwilling, or perhaps unable, to bear the expense of obtaining competent professional advice in looking into the Title for them; and it is a cruel hardship, that a man of this class, or of any class, after buying a lot, entering into possession, perhaps spending all his means and the labour of himself and his family for years in improving it, should be suddenly deprived of his property, and perhaps the labour and acquisitions of a life-time, through some defect in his Title of which he had no suspicion. Yet instances of this kind are unfortunately within the knowledge of almost every lawyer.

It is hardly a less cruel hardship, that the law should be in such a condition than a man who lends his money on a mortgage under professional advice, is liable to lose his money afterwards, from some latent defect in the

Title. I have heard of one lender who, in this way, lost £11,000 in one transaction. Even building Societies and Loan Companies occasionally meet with like losses, though, for various reasons, they are more frequently heard of in the case of private lenders.

But the advantage of our Titles being certain is very far from being confined to the particular cases in which innocent persons might otherwise suffer. The country generally would benefit by its being known that our Titles were perfectly safe and simple, or could be made so. Such a state of the law would tend to encourage both settlers and those who have money to invest, while any doubt or fear about our Titles discourages both.

The saving of time on all subsequent transactions, in relation to property, after a Certificate is obtained, would not be the least valuable result of the system which the Bill proposes to introduce. Under the existing system, the investigation sometimes takes weeks, sometimes months, and occasionally (as I know from personal experience) even years; and the transaction is sometimes broken off in consequence of the delay, or is only carried out when the owner's purpose in selling or mortgaging can no longer be answered. I have known some painful illustrations of these results, and probably no lawyer in large practice but has done so too.

Under the proposed measure, if an owner has a Certificate of Title, he may complete a sale or mortgage in two hours after bargaining for it. The preparation of the Deed or Mortgage seldom occupies much time; and the search at the Registry Office for mortgages or conveyances subsequent to the certificate, would be the work of but a few minutes.

The existing system exposes parties in taking or acting on a Title to the danger of the Title turning out

to be bad through some unperceived flaw or some unknown fact; to the danger of losing the evidence of a Title that is really good; to delay in the investigation when expedition is an object; and to constantly increasing expense in the investigation and proofs. The Bill proposes, by a short, inexpensive and just method, to remove these evils. I say a just method, for I do not know that any one will think it unjust or objectionable that latent claims will be shut out by the Certificate. We already by our Registry law recognize the propriety of such a provision; and, so great and undeniable are the advantages the country derives from the law, that the tendency is to extend and not to restrict it. Under its operation, latent claims are excluded without any of the precautions which the Bill proposes that the Court should observe before a Certificate is granted; and I think there can be no reasonable doubt, that, when a person is in possession of property, as apparent owner, when his Deeds and papers appear, on a rigid examination of them, to establish clearly that he is owner, when the Registry Office gives no intimation of an adverse claimant, when none can be discovered in answer to public advertisements, it is but just that the law should protect the person who purchases from such an owner, rather than protect the interest of some unknown person who afterwards sets up a claim of which he had taken no steps to give others warning.

The principle of the Act exists in Lower Canada, where, I believe, Sheriff's sales give an indefeasible Title. I have been informed that a Sheriff's Deed is in consequence regarded in Lower Canada as the best, and indeed only entirely safe Title that a man can have.

The machinery which the Bill adopts is, in principle,

that which was adopted in the Statutes regarding Irish Incumbered Estates, and which was found to work so beneficially in Ireland that it was afterwards made to apply there to all lands, instead of being confined, as it was in the first instance, to Incumbered Estates. It has also, with the cordial approbation of English Law Reformers of all parties, been lately extended to England; though the opposition of the Solicitors has prevented much use being yet made of it there. In this Province the interest of the legal profession is not against the proposed measure. Conveyancing forms a smaller part of professional business than in England, and the incidental advantages of the proposed measure will more than compensate Solicitors for their loss of profit through the general simplification of Titles. Had it been otherwise, I am bound to express my conviction that Canadian lawyers would have been found too liberal and patriotic to prefer their own interest to an important Reform in the laws of their country.

The English law as to the sale of Goods in *market overt*, is an illustration of the principle on which our Registry Law and the Bill in question alike proceed; and, for upwards of three hundred years, a like doctrine was allowed to prevail, to a considerable extent, in regard to land also, by the operation of fines and recoveries. Lord Coke said that "the Law had or-"dained the Court of Common Pleas as a *market overt* "for assurances of land by fine; so that he who shall "be assured of his land, not only against the seller but "against all strangers, it were good for him to pass it [illegible] *market overt*, by fine." But the change of [illegible] gradually destroyed the value of the precau[illegible]ich originally were a sufficient protection to persons who were no parties to the proceeding, and ultimately rendered necessary the abolition of fines and

recoveries. For, it will be remembered, that there was no investigation of the Title by the Court in such cases; all that was required was, that the person who "levied the fine" should be in possession of a freehold, by right or by wrong, and that no adverse claim should be duly made; and the only notice given was the rehearsal of a fictitious formula, couched in technical and obsolete language, to an uninterested audience, in the Court of Common Pleas at Westminster. The Fine bound all persons who were not under disability, even though they were entirely ignorant of the proceedings.

To prevent possible injustice from the working of the new system, the Bill provides all reasonable precautions. The Court, before declaring a Title good, is to make, by itself, or a competent officer acting under its own supervision, a thorough examination of the Title Deeds and evidences of Title in the possession or power of the party; a thorough search at the Registry Office is also required; and copies of all memorials are to be produced that relate to Deeds of which the originals cannot be found. An affidavit is required from the owner, that he knows of no adverse claim; and a certificate from his Solicitor or Counsel that he has examined the Title, and conferred with the owner, and believes the affidavit true and the Title good. There will thus be the best possible security that nothing is kept back. Notice of the application for a Certificate is further proposed to be given, not only to any one having an adverse claim, but to any one whom the Judge thinks it prudent to notify. In addition to all these precautions, notice is to be published in the *Canada Gazette*, and in any other newspapers the Court sees fit, in order that, if there is any claimant whose Title neither

appears on the Deeds nor in the Registry, nor is known to the claimant or his professional adviser, such claimant may still, if possible, receive an intimation of what is going on, and have an opportunity of establishing his right. But if any one has a claim which is not shown by the Deeds or the Registry, and which the astuteness of the Court and its officers cannot detect, and which even advertisements cannot bring to light, the Bill assumes that the public interests require that such a claim should thence-forward be excluded, as against honest purchasers or their representatives.

If, notwithstanding all the precautions referred to, a Certificate of Title should happen to be obtained through fraud or false statements on the part of a petitioner, the Certificate is declared (§47) to be void in such a case as respects the petitioner, and to be valid only in favor of a purchaser for value who had no notice of the fraud or falsehood. The chance of the Act working injustice in any possible case, is thus reduced to a minimum; while, on the other hand, it is especially declared that the Act is to be so construed and "carried out as to facilitate, as much as possible, "the obtaining of indefeasible Titles, by the owners of "Estates In Lands, through the simplest machinery, at "the smallest expense, and in the shortest time, con-"sistent with reasonable prudence in reference to the "rights and claims of other persons."

ACT FOR QUIETING TITLES TO REAL ESTATE IN UPPER CANADA.

[Assented to 18th September, 1865.]

Whereas it is expedient to give certainty to the title to real estates in Upper Canada, and to facilitate the proof thereof; and also to render the dealing with land more simple and economical: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1.—Any owner of an estate in fee simple in land in Upper Canada, or any trustee for the sale of the fee simple, shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared; and he shall be so entitled whether he has the legal estate or not, and whether his title is subject or not to any charges or incumbrances.

2.—Any other person who has an estate or interest, legal or equitable, in or out of land in Upper Canada, may also apply for the investigation of his title and a declaration of the validity thereof; but it shall be in the discretion of the Judge by or before whom the proceedings are taken, to grant or refuse the application for the investigation; and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the Judge in exercising such discretion shall be subject to appeal like any other decision.

3.—The application shall be to the Court of Chancery or any Judge thereof, and may be by a short petition in the form given in the Schedule A.

4.—A certificate by the Registrar of the said Court, of the petition being filed, shall be registered in the

Registry Office of the County in which the land lies, and this certificate may be in the form given in Schedule B.

5.—The application shall be supported by the following particulars:

(1.) The title deeds (if any) and evidences of title relating to the land that are in the possession or power of the applicant;

(2.) A certified copy of the memorials of all other registered instruments affecting the land, or of all since the last judicial certificate, if any under this Act, was given (as the case may be), up to the time of the registering of a certificate of the petition as provided for by Section four;

(3.) The certificate of the Registrar of the County in which the land lies, as to bills and proceedings in Chancery or in any County Court on its equity side, relating to the land, and of which a certificate has been registered in his office.

(4.) A concise statement of such facts as are necessary to make out the title, and which do not appear in the produced documents; but no abstract of produced documents shall be required, except on special grounds;

(5.) Proofs of any facts which are required to be proved in order to make out the title, and which are not established by the other produced documents, unless the Judge shall dispense with such proofs until a future stage of the investigation;

(6.) An affidavit or deposition by the person whose title is to be investigated and a certificate of one of his Counsel or Solicitors, to the effect hereinafter respectively mentioned, unless the Judge sees fit, for some special reason, to dispense with the same respectively;

(7.) A Schedule of the particulars produced under the preceding six sub-sections.

6.—The affidavit or deposition of the person whose title is to be investigated, shall state to the effect, that to the best of his knowledge and belief he is the owner of the estate or interest (whatever it is) which is claimed by the petition, subject only to the charges and incumbrances set forth in the petition or in the Schedule thereto, or that there is no charge of incumbrance affecting the land; that the deeds and evidences of title which he produces, and of which a list is contained in the Schedule produced under the preceding section, are all the title deeds and evidences of title relating to the land that are in his possession or power, and that he is not aware of the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein, or if he is aware of such adverse claim, he shall set forth every such adverse claim, and shall depose that he is not aware of any except what he sets forth; and the affidavit or deposition shall also set forth whether any one is in possession of the land, and under what claim, right or title; and shall state that to the best of the deponent's knowledge, information and belief, the said affidavit or deposition, and the other papers produced therewith, fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the same or any part thereof, or give any right as against the applicant.

7.—This affidavit or deposition may, in a proper case, be dispensed with, or may be made by some other person instead of the person whose title is to be investigated, or an affidavit or deposition as to part may be made by the one, and as to part by another, at the discretion of the Judge to whom the application is

made; and in such case the affidavit shall be modified accordingly.

8.—The certificate of the Counsel or Solicitor shall state to the effect, that he has investigated the title and believes the party to be the owner of the estate which the petition claims in the land in question, subject only (if such be the case) to any charges or incumbrances that may be set forth in the Schedule to the petition (or that he so believes, subject to any condition, qualification or exemption to be set forth in the certificate), and that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in the preceding two sections, and believes the affidavit or deposition to be true.

9.—The Judge in investigating the title may receive and act upon any evidence that is now received by any of the Courts on a question of title; and any evidence which the practice of English Conveyancers authorizes to be received on an investigation of a title out of Court; or any other evidence, whether the same be or be not receivable or sufficient in point of strict law, or according to the practice of English Conveyancers, provided the same satisfies the Judge of the truth of the facts intended to be made out thereby.

10.—The proofs required may be by, or in the form of, affidavits or certificates; or may be given *viva voce;* or may be in any other manner or form that under the circumstances of the case is satisfactory to the Judge in regard to the matters to which the same relate.

11.—If the Judge is not satisfied with the evidence of title produced in the first instance, he shall give a reasonable opportunity of producing further evidence, or of removing defects in the evidence produced.

12.—Before giving a certificate or conveyance under

this Act, the Judge shall direct to be published in the *Canada Gazette*, and if he sees fit in any other newspaper or newspapers, and in such form and for such period or periods as the Judge thinks expedient, a notice either of the application being made, or of the order or decision of the Judge thereon; and the certificate or conveyance shall not be signed or executed until after the expiration of at least four weeks from the first publication of such notice, or such other period as the Judge may appoint.

13.—When the Judge is satisfied respecting the title, and considers that the certificate of title can safely be granted without any other notice of application than the published notice so required, he shall grant the certificate accordingly.

14.—In case of there appearing to exist any claim adverse to or inconsistent with that of the petitioner to or in respect of any part of the land, the Judge shall direct such notice as he deems necessary to be mailed to or served on the adverse claimant, his solicitor, attorney or agent.

15.—In all cases he may require from time to time any further publication to take place, or any other notice to be mailed or served, that he deems necessary before granting his certificate.

16.—Before a certificate of title is granted, satisfactory evidence shall be given by certificate or otherwise, that all taxes, rates and assessments, for which the land is liable, have been paid, or that all except those for the current year have been paid.

17.—Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications, unless the petition for investigation expressly alleges the contrary;

(1). The reservations (if any) contained in the original grant from the Crown;

(2). Any municipal charges, rates or assessments theretofore imposed for local improvements, and not yet due and payable;

(3). Any title or lien which, by possession or improvement or other means, the owner or any person interested in any adjoining land has acquired to or in respect of the land mentioned in the certificate;

(4). Any lease or agreement for a lease, for a period yet to run, of not exceeding three years, where there is actual occupation under the same.

18.—But if the applicant desires the certificate to declare the title to be free from the said particulars, or any of them, his petition shall so state, and the investigation shall proceed accordingly.

19.—Any person having an adverse claim, or a claim not recognized in the applicant's petition, may at any time before the certificate of title is granted, file and serve on the applicant, his solicitor or agent, a short statement of his claim, which may be in the form set forth in schedule C.

20.—This claim shall be verified by an affidavit to be filed therewith.

21.—In case of a contest, the Judge may either decide the question of title on the evidence before him, or may refer the same or any matter involved therein to the full Court, or to any mode of investigation which is usual in other cases, or which he may deem expedient, and may defer granting the certificate until afterwards, according as the circumstances of each case render just and expedient.

22.—The Judge may, at any stage of the cause, order

security for costs to be given by the applicant for a certificate, or by any person making any adverse claim.

23.—The Judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any person, party to any proceeding under this Act, and may give directions as to the fund out of which any such costs shall be paid.

24.—The petitioner may by leave of the Judge withdraw his application at any time before final adjudication, on payment of all costs incurred in the investigation either by himself or by any adverse claimant.

25.—With a view of expediting investigations, and subject to any general orders in this behalf, the Judge, if he sees fit, may refer any petition presented under this Act to the Master or a Deputy Master or any other officer of the said Court, or to any Counsel named by the Judge, and in such case the referee shall proceed as the Judge himself should do under this Act, had the reference not been made, and shall have the same powers.

26.—The Judge may also refer any title to counsel named by the Judge, for a preliminary report or examination, and may call for the assistance of counsel in any other way and for any other purpose that may tend to the dispatch of business under this Act.

27.—The Judge may give one certificate of title, comprising all the land mentioned in the petition, or may give separate certificates as to the title of separate parts of the land.

28.—The certificate of title may be in the form contained in Schedule D to this Act, and shall be under the seal of the Court, and shall be signed by one of the Judges and by the Registrar of the Court, and the same and the Schedule (if any) thereto, or a duplicate or

counterpart of the same, shall be registered in full, both in the Court of Chancery and in the Books of the Registry Office of the County where the land lies, without any further proof thereof.

29.—A memorandum or certificate of the registration may be endorsed on the certificate of title or on any counterpart or certified copy thereof thus:—

"Registered in Chancery,——186—,——Book——, Page——, A. G., Registrar.

Registered in the Registry Office for the County of ——, Book——, Page——, (Date) ——Registrar," and a memorandum or certificate so signed shall be evidence of the registration mentioned therein.

30.—The certificate of title when so sealed, signed and registered, shall be conclusive at law and in equity, and the title therein mentioned shall be deemed absolute and indefeasible, from the day of the date of the certificate, as regards Her Majesty and all persons whatever, subject only to any charges or incumbrances, exceptions or qualifications mentioned therein, or in the Schedule thereto, and shall be conclusive evidence that every application, notice, publication, proceedings, consent and act whatsoever, which ought to have been made given and done previously to the granting of the certificate, has been made, given and done by the proper parties.

31.—After a certificate of title is duly registered, a copy of the certificate purporting to be signed and certified as such copy, by the Registrar in Chancery, or by the Registrar for the County in which the land lies, shall be admissible evidence of such copy, and without accounting for the non-production of the certificate.

32.—In case of a Chancery sale, the Court of Chancery, if it thinks fit, may investigate the title with a

view to granting an indefeasible title, and in that case, a conveyance executed to the purchaser under the seal of the Court and purporting to be under the authority of this Act, shall have the same conclusive effect as a certificate.

33.—The conveyance may be in the form set forth in Schedule E to this Act.

34.—Where a decree is made for the specific performance of a contract for the sale of an estate, and it is part of the contract that the vendor shall have an indefeasible title, the Court shall make the like investigation, and the conveyance may be in the form set forth in the same Schedule E.

35.—In case any person domiciled in Upper Canada, or claiming any real estate in Upper Canada desires to establish, not his title to some specific property, but generally that he is the legitimate child of his parents, or that the marriage of his father or mother, or of his grandfather and grandmother, was a valid marriage, or that his own marriage was a valid marriage, or that he is the heir or one of the co-heirs of any person deceased, or that he is a natural born subject of Her Majesty, he may, if the said Court thinks fit, have any of the said matters judicially investigated and declared.

36.—The application may be by a short petition, stating the object of the application.

37.—The petition shall be supported by an affidavit of the applicant verifying the statements of the petition, and stating further that his claim is not disputed or questioned by any person; or if his claim is to his knowledge disputed or questioned, he shall set forth the facts in relation to such dispute or question, and shall depose that he is not aware of any dispute or question, except what he has set forth, and he shall state in the affidavit

such other facts as may satisfy the Court of the propriety of proceeding with the investigation.

38.—The investigation shall be made by the same judicial authority and in the same manner, and on the same evidence, and the same publication or notice shall be required, and the same proceedings generally shall be had, and the certificate granted on such investigation shall be registered in the same way, and may be proved by the same evidence, as nearly as may be respectively, as in cases under the first section of this Act.

39.—This certificate when registered shall be conclusive and indefeasible in favor of the party on whose application the same was granted, and all persons claiming by, from, through or under him, and shall be *prima facie* evidence in favor of all other persons, and against all persons of the truth of the fact therein declared.

40.—A separate book shall be kept in Chancery for the registering of these and other certificates of title, and conveyances given under this Act, and the certificates and conveyances registered therein shall be numbered in order, and convenient indexes to the books shall be kept in such form as the Court from time to time directs.

41.—In case any person who, if not under disability, might have made any application, given any consent or done any act, or been party to any proceeding under this Act, is a minor, an idiot or a lunatic, the guardian of the minor or committee of the estate of the idiot or lunatic may make such application, give such consent, do such act and be party to such proceeding as such person might, if free from disability, have made, given, done or been party to, and shall otherwise represent such person for the purposes of this Act; and if the minor has no guardian, or the idiot or lunatic no com-

mittee of his estate, the Court or Judges may appoint a person with like power to act for the minor, idiot, or lunatic; but a married woman shall, for the purposes of this Act, be deemed a feme-sole.

42.—After a certificate is granted in regard to any of the matters investigated under this Act, any party aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, have the title or claim re-investigated on such terms as may be just.

43.—But no proceeding on such petition shall affect the title of any person who, in the meantime, and after the registration of the certificate, shall have acquired, by sale, mortgage or contract, for valuable consideration, any estate or interest in the land specified in the certificate of title; or (in case the certificate was under the thirty-fifth section of this Act) in any land or other property, the title to which was derived from, through or under the person named in the certificate, in the character which is thereby declared to belong to him.

44.—Proceedings under this Act shall not abate or be suspended by any death or transmission or change of interest, but in any such event the Court or Judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise in relation thereto, as under the circumstances may be just.

45.—No petition, order, affidavit, certificate, registration or other proceeding under this Act shall be invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding.

46.—An appeal shall lie from an order or decision of a Judge under this Act to the full Court, and from the

full Court to the Court of Error and Appeals, as in the case of Orders, Decrees, Rules and Judgments, in suits.

47.—The foregoing provisions of this Act shall be so construed and carried out, as to facilitate, as much as possible, the obtaining of indefeasible titles by the owners of estates in land, through the simplest machinery, at the smallest expense, and in the shortest time, consistent with reasonable prudence in reference to the rights or claims of other persons.

48.—If in the course of any proceeding under this Act, any person acting either as principal or agent, shall, knowingly and with intent to deceive, make, or assist or join in or be privy to the making of any material false statement or representation, or suppress, conceal or assist or join in or be privy to the suppressing, with-holding or concealing from the Court any material document, fact or matter of information, every person so acting shall be deemed to be guilty of a misdemeanor, and on conviction shall be liable to be imprisoned in the Provincial Penitentiary for a term not exceeding three years, and not less than two years, and to be imprisoned in any other prison or place of confinement for any term less than two years, and in the latter case with or without hard labor, or to be fined such sum as the Court by which he is convicted shall award; any order or declaration of title obtained by means of such fraud or falsehood, shall be null and void for or against all persons other than a purchaser for valuable consideration without notice.

49.—If in the course of any proceeding before the Court, under this Act, any person shall fradulently forge or alter, or assist in forging or altering any certificate or other document relating to such land or the title thereto, or shall fradulently offer, utter, dispose of,

or put off any such certificate or other document, knowing the same to be forged or altered, such person shall be guilty of felony, and upon conviction shall be liable, at the discretion of the Court by which he is convicted, to be imprisoned in the Provincial Penitentiary for life or for any term not less than three years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, and in the latter case with or without hard labor.

50.—No proceeding or conviction for any act hereby declared to be a misdemeanor, shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity, against the person who has committed such act.

51.—Nothing in this Act shall entitle any person to refuse to answer any question or interrogatory in any civil proceeding in any Court of law or equity, but no answer to any such question or interrogatory shall be admissible in evidence against such person in any civil proceeding.

52.—The said Court may, from time to time, make general orders for referring all or any applications under this Act, to any master, deputy-master or other officer of the Court, or to any Counsel or other person appointed by the Court in that behalf, and to regulate the fees to be paid on such reference, and the referee shall have the same powers as a Judge within the limits prescribed by such general orders; and the Court may also from time to time, make other general orders for the purposes of this Act, and for regulating the practice under the same; and all general orders made in pursuance of this section may from time to time be rescinded or altered by the said Court.

SCHEDULE A.

IN CHANCERY.

Form of Petition for the investigation, sec. 3.

In the matter of (*the East half of lot No.——in the ——concession in the township of——or as the case may be, describing the property very briefly*).

To the Honorable the Judges of the Court of Chancery:—

The Petition of————

SHEWETH,—

That your petitioner is absolute owner in fee simple in possession (*or as the case may be*), of the following property (*describing it*).

That there is no charge or other incumbrance affecting your petitioner's title to the said land (*except, &c., or,—that your petitioner's title is subject only to the charges or incumbrances in the schedule hereto mentioned, and that the only persons having or claiming any charge, incumbrance, estate, right or interest in the said land are set forth in the schedule hereto annexed, and that the charge, incumbrance, estate, right or interest belonging to or claimed by each is therein set forth*). Your petitioner therefore prays that his title to the said land may be investigated and declared under the Act for quieting titles to real estate in Upper Canada.

(Signed), A. B.
or C. D., Solicitor for A. B.

SCHEDULE B.

***Form of Registrar's Certificate of an Application under this Act, sec.* 4.**

I certify that an application has been made by——

to the Court of Chancery, under the Act for quieting titles to real estate in Upper Canada, for a certificate of title to the following lands (*stating them*).

ALEX. GRANT,
Registrar.

SCHEDULE C.

Form of Adverse Claimant's Statement, sec. 19.

In the matter of, &c., (*as in petition*).

A. B. of, &c., claims to be the owner of the said land, &c., &c., (*stating very briefly the nature of the claim and the grounds of it*). Dated this——day of ——186—.

(Signed), A. B.
or C. D., Solicitor for A. B.

SCHEDULE D.

Form of Chancery Certificate of Title, sec. 28.

No.——

These are to certify under the authority of the Act for quieting titles to real estate in Upper Canada, that A. B.——is the legal and beneficial owner in fee simple in possession (*or as the case may be*), of all, &c., (*here describe the property*), subject to the reservations mentioned in the seventeenth section of the said Act and therein numbered respectively one, two, three and four, (*or as the case may be*), and to (*specifying either by reference to a schedule or otherwise any of the other charges or incumbrances, exceptions, or qualifications to which the title of A. B. is subject*) but free from all other rights, interests, claims and demands whatever. Or that, (*stating the facts found and declared under*

the thirty-fifth section of this Act, and stating on whose application the same are declared).

In witness whereof——(*Chancellor or one of the Vice-Chancellors*), of the said court, has hereunto set his hand, and the seal of the said court has been here-unto affixed, this——day of——.

A. GRANT, C. D. L. S.
Registrar.

SCHEDULE E.

Form of Chancery Deed, secs. 33 *and* 34.

No.——

The Court of Chancery for Upper Canada, under the authority of the Act for quieting titles to real estate in Upper Canada, doth hereby grant unto A. B., &c., (*here describe the premises sold*), to hold the same unto the said——his heirs and assigns for ever (*or as the case may be*), subject to (*here specify as in the case of a Chancery certificate of title*).

In witness whereof——(*Chancellor or one of the Vice-Chancellors of the said Court*), has here-unto set his hand, and the seal of the said court has been set, this——day of——in the year of our Lord,——.

A. GRANT, C. D. L. S.
Registrar.

ORDERS OF COURT.

AUGUST 31, 1867.

1. Under the Act for Quieting Titles to Real Estate in Upper Canada the petition for an investigation of title is not to include two or more properties dependent on separate and distinct titles; but may include any number of lots or parcels belonging to the same person and dependent on one and the same chain of title.

2. Where an application is made under the second section of the Act, the Registrar is to attend one of the Judges with the petition for directions, before the same is referred for investigation.

3. A petition under the Act may, at the option of the Petitioner, be referred to any of the Officers of the Court at Toronto, or to any Conveyancing Counsel, who may from time to time be designated by the Court for the purpose; or to any of the following local Masters, viz., the Masters at Barrie, Belleville, Brantford, Brockville, Cobourg, Cornwall, Goderich, Guelph, Hamilton, Kingston, Lindsay, London, Owen Sound, Peterborough, Sandwich, Sarnia, Simcoe, Stratford, St. Catharines, Whitby, and Woodstock; or to any other of the local Masters who shall hereafter be designated.

4. To facilitate the proceedings in cases referred to the local Masters, two Inspectors of Titles will be named by the Court, for the purposes, and with the powers, mentioned in and provided for by, the 25th and 26th sections of the said Act; and on the petition are to be endorsed the names of one of the Inspectors, and of the

local Master, thus: "To be referred to the Master at ————, and to Mr. ————, Inspector of Titles."

5. Petitions filed unindorsed with the name of a Referee are to be referred to the Referees in Toronto in rotation, or otherwise as the Court from time to time directs; but a petition endorsed with the name of any Referee is to be referred to him accordingly, unless the Court otherwise directs.

6. Where a petitioner desires the reference to a local Master, the petition is to be entered with the Inspector of Titles before being filed with the Registrar as required by the Statute, and the Inspector is to note thereon the day of entering the same, adding to such note his own initials, and is thereupon to deliver the petition to the Solicitor, or, if duly stamped, to the Registrar, to be filed.

7. The local Master shall be entitled to confer or correspond from time to time with the Inspector of Titles, for advice and assistance on questions of practice or evidence, or other questions arising under the Act or under these Orders.

8. The Registrar is to deliver to the party filing a petition under the Act, a certificate of the filing thereof, for registration in the proper County; and thereupon the petition is forthwith to be referred, and delivered or posted by the Registrar, to the Referee named for that purpose.

9. The particulars necessary under the fifth section of the Act to support the petition are to be delivered or sent by the petitioner or his Solicitor to the Referee, and are to be forthwith examined and considered by him.

10. In every case of an investigation of the title to property under the said Act, the petitioner is to shew, by affidavit or otherwise, whether possession has always accompanied the title under which he claims the property, or how otherwise, or is to shew some sufficient reason for dispensing with such proof either wholly or in part.

11. Where there is no contest, the attendance of the petitioner, or of any solicitor on his behalf, is not to be required on the examination of the title, except where, for any special reason, the Referee directs such attendance.

12. If, on such examination as aforesaid, the Referee finds the proof of title defective, he is to deliver or mail to the petitioner, or to his Solicitor or Agent, a memorandum of such finding, stating shortly therein what the defects are.

13. When the Referee finds that a good title is shewn, he is to prepare the necessary advertisement, and the same is to be published in the Official *Gazette*, and in any other newspaper or newspapers in which the Referee thinks it proper to have the same inserted; and a copy of the advertisement is also to be put up on the door of the Court House of the County where the land lies, and in some conspicuous place in the Post Office which is situate nearest to the property the title of which is under investigation; and the Referee is to endorse on the advertisement so prepared by him the name or names of the newspaper or newspapers in which the same is to be published, and the number of insertions to be given therein respectively, and the period, (not less than four weeks) for which the notice is to be continued at the Court House and Post Office respectively.

14. Any notice of the application to be served or mailed under the 14th section of the Act, is to be prepared by the Referee; and directions are in like manner to be given by him as to the persons to be served with such notice, and as to the mode of serving the same.

15. The Inspectors and Toronto Referees are from time to time to confer with one of the Judges in respect of matters before such Inspectors and Toronto Referees, as there shall be occasion.

16. When any person has shewn himself, in the opinion of a local Master, to be entitled to a Certificate or Conveyance under the Act, and has published and given all the notices required, the Master is to write at the foot of the petition, and sign, a memorandum to the effect following: "I am of opinion that the petitioner is entitled to a Certificate of Title (*or Conveyance*) as prayed" (*or* subject to the following incumbrances, &c., *as the case may be*); and is to transmit the petition (if by mail, the postage being prepaid), with the deeds, evidence, and other papers before him in reference thereto, to the Inspector of Titles with whom the petition was entered; and the Inspector is to examine the same carefully, and should he find any defect in the evidence of title, or in the proceedings, he is, by correspondence or otherwise, to point the same out to the petitioner, or his Solicitor, or to the Master, as the case may be, in order that the defect may be remedied before a Judge is attended with the petition and papers for approval.

17. When the Inspector, or other Referee (not being a local Master), finds that the petitioner has shewn himself entitled to a Certificate of Title, or a Conveyance under the Act, and has published and given all the

notices required, the Inspector, or Referee, (not being a local Master), is to prepare the Certificate of Title, or Conveyance, and is to engross the same in duplicate, one on parchment, and one on paper; and is to sign the same respectively at the foot or in the margin thereof; and is to attend one of the Judges therewith, and with the deeds, evidence, and other papers before him in reference thereto; and on the Certificate or Conveyance being signed by the Judge, the Inspector, or other Referee aforesaid, as the case may be, is to transmit or deliver the same to the Registrar, to be signed and registered by him; and the Registrar is to deliver or transmit the same, when so signed and registered, to the petitioner, his Solicitor or Agent, for registration in the proper County.

18. When a Certificate of Title or Conveyance under the Act has been granted, the Inspector or Referee may, without further order, deliver, on demand, to the party entitled thereto, or his Solicitor, all deeds and other evidences of title, not including affidavits made, and evidence given, in the matter of the title, and is to take his receipt therefor.

19. Each of the Inspectors and other Toronto Referees is to keep a Book, and to preserve therein a copy of all his letters under these Orders, and is to prepare monthly, for the information of the Profession, a memorandum of points of practice decided in matters under the Act.

20. The fees of Solicitors and Counsel, and the fees payable by stamps, for proceedings under the said Act, are, respectively, to be the same as for like proceedings in other cases.

21. The Referee is, in lieu of all other fees, to be entitled to a fee of fifty cents for every deed in the chain of title, other than satisfied mortgages; and Refe-

rees who prepare the Certificate or Conveyance, are to have a fee of four dollars for drawing and engrossing the same in duplicate. Besides these fees, the Referee is to have the same fees in respect of proceedings occasioned by any defects in the proof of title, which shall be mentioned in the Referee's memorandum referred to in the eleventh of these Orders, as are payable to the Master in respect of similar proceedings in suits. No further or other fee is to be payable to the Referee in respect of any of the proceedings by or before him under the said Act in an uncontested case.

22. In a contested case, the Referee is, in addition, to be entitled, in respect of the proceedings occasioned by the contest, to the same fees therefor as are payable to him for the like proceedings in suits.

23. The fee of the Inspector of Titles on entering the petition with him is eight dollars, and no further fee is to be paid him for correspondence, examination of the title, drawing and engrossing Certificate or Conveyance, or for any other matter or thing done under the petition.

24. The applicant or his Solicitor is to pay, or prepay, as the case may be, all postages and other expenses of transmitting letters or papers.

25. Petitions under the 35th section of the Act are to be filed and proceeded with in the same manner (as nearly as may be) as petitions for an indefeasible title; and the fees of Officers, Solicitors, and Counsel, are to be the same as in respect of the like proceedings in suits.

26. The Orders of the 19th of September, 1865, are hereby rescinded.

P. M. VANKOUGHNET, C.
J. G. SPRAGGE, V. C.
O. MOWAT, V. C.

AS TO THE PETITION.

In the heading the lands should be shortly described to avoid the expense of advertising. A loose indefinite description as "part of lot 2" without saying what part is to be avoided. If the land is and for some time past has been in the occupation of any person, it may sometimes be proper to state, "now and for some time past, occupied by ." So, also, if it adjoin any well-known farm or house, or has been long occupied by a well-known individual or Company, or a Bank, it may be advisable to say that it so adjoins on the north, or as the case may be. In the body of the Petition, however, the description should be as certain as a conveyance, both to identify the whole land claimed with the County Registrar's Certificate, and in order that the Certificate of Title may follow it, and for Registry purposes. For the same reasons also the Petition should properly describe the estate or interest claimed in the land. Moreover, with a view to notice, it is important that the Petition should be correct, for the Petition and the Notice under it should not be for a larger interest than the Petitioner has, as for instance, for a fee simple absolute, when the estate is a fee tail, or liable to be defeated by an executory devise over. In short the Petition should be so framed as that the Judge can grant what is therein prayed for.

In the following forms the cases put, come under the 2nd section of the Act.

A Mortgage in fee outstanding and unsatisfied will not prevent the application of the Act.

If an applicant find a difficulty in describing his interest by reason of the informality of any instrument,

he may have to set out the material parts of it *Verbatim* and claim under it.

FORM OF PETITION.

In Chancery:

In the matter of (*see remarks above*).

TO THE HONORABLE THE JUDGES OF THE COURT OF CHANCERY.

The petition of of

sheweth,—

That your petitioner is entitled to the property hereinafter described, as tenant in fee simple absolute (*following the form in the Act*).

The following are illustrations of special cases:—

If the estate be a present one, liable to be defeated by an executory devise over, or by limitations by way of shifting use contained in a deed, as tenant in fee simple, (*or as the case may be*), determinable on, (*set out the event whereon the devise over takes effect, or the use shifts, and referring to the instrument*), (*or, if the estate be not in possession, but a future estate dependent on the determination of a prior estate by executory devise or shifting use*), entitled, &c., dependent and to take effect in possession on, (*setting out the event and the instrument; or, say, on the determination of the estate thereby devised or granted to, &c.*) (*If the event has happened whereon the devise over takes effect, or the use shifts, and is executed in possession, then claim as in an ordinary case of an absolute estate in possession. In the case of an estate tail, the issue in tail may have been barred, but not those in*

A. See sections 1, 2, 3, and Schedule A.

remainder or reversion, in which case the applicant may claim "as entitled to a base fee," or, "as tenant in tail entitled to a base fee," according to the fact, "within the meaning of the Consolidated Statute of Upper Canada, chapter 83." *If neither issue in tail, or remainder man, or reversioner, have been barred, then claim "as actual tenant in tail within the meaning, &c.") (If the petitioner claims a term of years renewable from time to time in perpetuity or otherwise, state*), entitled to a term of years expiring on

, created by, and subject to the provisoes, rents, conditions, covenants and agreements contained in, a certain Indenture between, &c.,
dated, &c., registered, &c.,
renewable as in the said Indenture specified

That there is no charge or other incumbrance affecting your petitioner's title to the said land, (*except an annuity to under the will of , or, under an Indenture dated between, &c., , or, a Mortgage dated between or, a Policy of Insurance granted by Mutual Insurance Company** or the lieu of* (a) *as a Vendor for the purchase money or part.*)

If the incumbrances be many, it will be better to name them in the Schedule, as authorized by the Statutory form, rather than embody them in the petition.

(*In case any charges or incumbrances, apparently existing, be not admitted, so that the petitioner is not willing to take a certificate subject thereto, and the petitioner denies the same, or claims paramount or adversely thereto, then the petition will be varied and*

* Under Con. Stat., c. 52, § 67, the interest of the insured in the property stands pledged to the Company.

such charges, &c. will be set out as in the Statutory form "That the only persons claiming any charges, &c." Thus, if a petitioner is willing to take a Certificate subject to an incumbrance, he excepts it; if, however, he claims adversely to it, as for instance, contending that the incumbrance is barred by time or by payment, and presumption of reconveyance or otherwise, he sets forth the incumbrance as in the form, and those claiming under it will be regarded as adverse claimants, and the certificate will be subject to their claim, or on proper proceedings, and notice to them, they will be barred.)

(*If the names of parties having any estate or interest cannot be ascertained, as in case of absent heirs, it will suffice to describe them by nomen collectivum as the heirs at law of, &c.*)

MEM. 1. Petition to be signed by applicant or solicitor, with address, so that the acting Referee may communicate with him by mail, if necessary.

2. Endorse petition with the name of any local Master, or of one of the Referees of Title in Toronto. See Orders, Nos. 4, 5, 6, of 1867.

If a local Master be selected as Referee, and not one of the Toronto Referees, then one of the latter must act as Inspector, Order 5. On the petition is to be endorsed the name of one of the Inspectors, Order 4, who will act as such, and with whom the master will correspond for advice, &c., Order 7.

Where a local Master is selected as Referee, and the name of an Inspector is not endorsed, the Toronto Referees will act in rotation, Order 5.

If the petitioner desires, he can refer at once the petition to one of the Toronto Referees, without the

intervention of any local Master, in which case the endorsement will be of the name of such Toronto Referee only, and he will hear and correspond by mail, as the case may require.

3. Where a local Master is selected as a Referee, the petition must be sent to the Inspector, whose name is endorsed for entry before filing. See Order 6, of 1867. The prior stamping the petition is advisable, as in such case, the Inspector can file it at once with the Registrar instead of returning it to the Solicitor to be stamped.

REMARKS AS TO SECTION 5, CLAUSES 1, 2, 4 & 5.

CLAUSE 1: *Evidences of Title.*—By this is meant more especially written documents other than deeds, and not proof of facts, which are provided for by cl. 5.

Powers of attorney under which deeds are executed require to be produced, or secondary evidence as in the case of any other title deed, and, except in cases coming within 29 Vict., c. 28, §§ 23, 24, evidence must be given that at the time of acting on the power, the donor thereof was alive.

CLAUSE 2: *Copy of Memorials to time of Registry of Certificate.*—This shows that the particulars to support the application are not to be delivered to the Referee till after certificate of filing petition is granted and registered, for it is impossible to produce prior to the grant of certificate a certified copy of all memorials up to a subsequent period, viz., registry.

In writing to the Registrar for certified copies of memorials, if the applicant intends to use them as evidence, he must at the same time get a certified copy of affidavits of execution.

CLAUSE 3: *Concise Statement of Facts* necessary to make out the title not appearing on documents produced —as title by length of possession, descents, deaths, &c., with dates if possible.

CLAUSE 4: *No Abstract need be produced*—Under the English practice of Conveyancing, the Vendor's Solicitor is bound to furnish to the Vendee's Solicitor an abstract of title: this sets out the whole title and gives the material particulars of each instrument, and of each fact necessary to make out a good title, but gives no proof; all is supposed to be true as stated, and capable of proof. The Vendor's Solicitor peruses the abstract, and notes in the margin his objections, which are termed requisitions, as, for instance, that a wife is not shown to be dead or to have barred her dower. The abstract is returned with the requisitions, which are answered, and so the matter goes on till the Vendee's Solicitor is satisfied, or the parties are at issue on some point, or the title found defective. If the title is at length cleared up on the abstract, the title deeds, evidence, and proof are now for the first time produced and gone into, and it is seen whether what is stated in the abstract is true; *i. e.*, whether such a deed abstracted does convey in the manner stated in the abstract. This is termed verifying the abstract.

No abstract is to be produced as required by the English practice setting out fully and minutely the description of parties and of lands, &c.; but still, the Referee should prepare an analysis of the title, as being requisite not only for himself, for a full and clear appreciation of the title, for ready reference, to avoid oversight and mistakes of memory as to defects and evidence wanting, and how supplied and removed, but also for

information to, and reference by, the Judge.—See further Forms of Analysis.

CLAUSE 5: *Proof of Facts* not established by produced deeds and muniments of title, as length of possession, loss of deeds, searches therefor, and contents thereof, marriages, births, deaths, &c.—See § 10, 9, and the Forms of Analysis.

These proofs should accompany the deeds and other particulars when sent to the Referee, except in cases where *vivâ voce* testimony has to be given.

Where no wife joins in a conveyance, evidence should be given that the grantor was unmarried, or that dower does not attach, or is barred by time, devise or otherwise, or that the widow is dead.

CLAUSE 6: *Affidavit of Applicant.*—See Form, and remarks thereto; see also §§ 6 & 7.

Certificate of Counsel.—See Form, and remarks thereto; see also § 8.

FORM OF REGISTRAR'S CERTIFICATE UNDER §3, SUB-SEC. 3, OF THE ACT.

I, , Registrar, (*or Deputy Registrar*), of , certify that there are no instruments or proceedings registered in the Registry Office for , affecting the lands hereinafter named (*describe them in manner as they will require to be set forth in Certificate of Title*),* except (*specify, if any, giving*

* The Registrar must necessarily specify the land to which his certificate relates with particularity, and hence it will be seen that this is one reason why the petition must also do so, otherwise the petition and Registrar's certificate would not be identical.—See further note, in Form of Petition.

names of parties, their Solicitors, if any, and addresses, if any, in cases of proceedings in Chancery or the County Court on its equity side).

(Signed), ————————

MEM.—As to the necessity of this certificate, see sec. 5, l. 2 and 3, of the Act. This certificate must be obtained after the registry of the filing of the petition

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AFFIDAVIT OF PETITIONER IN SUPPORT OF PETITION.

In Chancery:

In the matter of

I, of the applicant in the above matter make oath and say:—

1. I am the owner of the estate (*or interest*) claimed by me in my petition in this matter (*or repeat as in the words of the petition*) subject only to the charges and incumbrances set forth in the petition, (*or in the schedule thereto, (or, that there is no charge or incumbrance affecting the lands.*

2. That the deeds and evidences of title which I produce in support ot my application herein, and of which a list is contained in the schedule of particulars pro-

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In case a prior certificate or abstract has been given, take the following as a further form:—

I certify that no instruments or proceedings have been registered in the Registry Office of up to this date, except as above mentioned, and except the following which are registered since the date of the above certificate.

vided by me in support thereof,* and herewith shown to me and marked with the letter A, and also the title deeds and evidences of title in my possession or power, and the following title deeds and evidences of title are in the possession or power of , of , namely (*specify them, or if numerous name them in a schedule, in which case the affidavits will be varied accordingly, and marked and identified*) and that as regards the following title deeds and evidences of title I am not aware who has the custody or control thereof, namely, (*specify or give schedule as above*) and that for the said title deeds and evidence whereof I am not aware who has the possession, I have caused the following search to be made, namely, (*shew sufficient to let in secondary evidence.*)†

3. I am not aware of the existence of any claim adverse to or inconsistent with my own to any part of the land claimed by me or to any interest therein (*except —specify the adverse claim if any, with name and address of claimant if known—and how the claim arises.*

4. I am (*or John Doe, yeoman is*)‡ in possession of the land (*shew under what claim right or title; and that to the best of my knowledge possession has always accompanied the title*) under which I claim (*or how otherwise*)§ (*or say;*) always since the year

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* The Commissioner administering the affidavit should identify the instruments as usual.

†See remarks and cases under head of proofs and evidence.

‡ The fact of an adverse claimant being in possession will not prevent an application being made, of course notice will be given to the occupant and he will be barred or not according to the circumstances.

§ See order No. 10, 1867.—It will generally suffice to go back 20 years only as to possession going with the title.—

accompanied the title under which I claim, in which year one through whom I claim took possession, and prior thereto the land was in a state of nature. If an adverse claimant has been dispossessed by process of law or otherwise, state the fact and give particulars.

If the applicant cannot give a complete account as to possession, or can give none at all, let him shew some sufficient reason therefor.

5. To the best of my knowledge information and belief this affidavit and the other papers produced herewith in support of my application which are set forth in the said schedule of particulars fully and fairly disclose all facts material to my title, and all contracts and dealings which affect the same or any part thereof or give any right as against me.

6. I am not aware of any Insurance* effected with any Mutual Insurance Company by any former owner of or person interested in the said lands or any buildings thereon, nor do I believe there was any such nor

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Where possession does not accompany the right of possession, and some other than the person claiming has been or is in possession without, or against the assent of the claimants or of any one through whom he claims, suspicion at once arises that such occupant had or has some claim or title.—Possession indeed is *primâ facie* evidence of seisin in fee.—The applicants therefore must displace any possession except under the claim of title, or if any has existed, account for it, and remove the suspicion which will otherwise exist in the mind of the Referee—unless satisfactor accounted for it is probable that the Referee would requ notice of the application to be given to the occupant.—Adverse possession at the time of applying will not prevent the Statute applying and on proper proceedings the occupant may be barred.

* See ante p. 53 n.

have I myself effected any such insurance—(*or say, that there never were any buildings, if the fact be so, or as the facts may be*).

7. That there are no arrears of taxes on the said lands.

8. That to the best of my knowledge and belief no person or body corporate has any right of way, or of entry, or of damming back water, or of overflowing, or of placing or maintaining any erection, or of preventing the placing or maintaining any erection, on in to, or over the said lands other than myself (*and give names and addresses, if possible, of any parties having any easement or right, and state the nature thereof,*) and the said land is not subject to any easement or dominant right whatever (*except as aforesaid.*

CERTIFICATE OF COUNSEL.

SECTION 5, CLAUSE 6, AND SECTION 8.

In Chancery:

In the matter (*as to heading see remarks p*)

I, of (*Barrister or Attorney at Law*) hereby certify that as (*Counsel or Solicitor*) for in this matter, I have investigated his title set forth in his petition, and believe him to be the owner of the Estate which he claims in the petition (subject only to the charges and incumbrances therein set forth).

I further certify that I have conferred with the Applicant on the subject of the various matters set forth in his affidavit in support of his petition and believe the same to be true.*

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*The Counsel or Solicitor is of course not bound by the

SCHEDULE OF PARTICULARS.

Sec. 5, clause 7, should be headed "In the matter," and signed, and identified in the usual way by the Commissioner as the exhibit referred to in the affidavit of the petitioner.

Everything produced must be enumerated in the Schedule, and shortly therein described; and on each deed, memorial, affidavit, &c., produced, should be endorsed an alphabetical letter, and the same letter should appear in the Schedule, opposite to each. The Judge may dispense with proofs, &c. The Referee acts as Judge (see sec. 5 of the Act.) Where *vivâ voce* evidence has to be given, the proof is necessarily dispensed with till a future stage.

Form of Schedule of Particulars.

1. A, Affidavit of John Doe.
2. B, Conveyance, Brown to Jones, dated
3. C, Letter, Jones to Robinson, dated
4. D, Probate Robinson's Will.

Petitioner to sign Schedule, and Commissioner to identify it in the usual way, as it is an exhibit and referred to as such in the affidavit of applicant.

FORM OF CERTIFICATE OF PAYMENT OF TAXES—SEC. 16.

TREASURER'S OFFICE, CO. OF YORK,
TORONTO, Ontario, day of 1867.

I certify that no charge for arrears of taxes appears

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petition, and if any claim or charge or material fact or matter exists not set forth in the petition, he should mention it.—The Petitioner in such case should reconsider the Petition.

at the date hereof on the books in this office against the following lands in the County of York, viz-: Lot No. 27, in the first concession of the Township of Vaughan.

And I certify that the Assessment Roll for the year 1856 *has been deposited in this office.*

A. B., *Treasurer.*

If the Roll has not been carried in, the certificate must be signed by the Treasurer without the words in italics, and a similar certificate for the past year must be signed by the Township Treasurer with those words; and if the Roll has not been returned to him, a receipt for the taxes for the past year by the collector of taxes will be sufficient, but the Treasurer's certificate will be required to shew that there are no previous arrears of taxes.

SHERIFF'S CERTIFICATE AS TO SALES.

SHERIFF'S OFFICE, TORONTO,
County of York.

I hereby certify that Lot No. 27 in the first concession of Vaughan in the said County, has not been sold by me under any writ of execution since the day of , 1867,* nor for taxes since the day of , 1866,† up to the present date.

Dated the day of , 1867.

A. B., *Sheriff.*

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* Six months previous to the registry of the certificate that the petition is filed.

† One year and six months previous thereto.

SHERIFF'S OFFICE, TORONTO,
County of York.

I hereby certify that I have no writs of execution in my office against the lands of A. B., C. D., E. F., or any or either of them, at the date hereof.

A. B., *Sheriff*

NOTE.—The Court allows the Sheriff 25 cents for each search, and 50 cents for the certificate, in which all the names are to be inserted.

AFFIDAVIT OF CROWN DEBTS.

Note, if the Applicant wishes to avoid the expense of this Affidavit, and of the requisite searches, he may, in his petition, except the claim of Her Majesty.

In Chancery:

In the matter of, &c.

I, A. B., of make oath and say, that I have carefully searched the Register in the Office of the Clerk of the Court of Queen's Bench, in Toronto, and I say that there has not been registered therein, any Deed, Bond, Contract or other instrument, whereby any Debt, Obligation or Duty, was incurred or created to Her Majesty on the part of Henry Thomas, the petitioner, in this matter, or on the part of C. D. E. F., &c.,* save and except the several Bonds or Instruments named, and set forth in the Schedule hereunder written.

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* Here name all persons who prior to the Statute 29 & 30 Vict., c. 43, have had any estate in the land.

For necessity for Registry of Crown Debts, see Con. Stat., c. 5.

Since 15th August, 1866—29th and 30th Vic., c. 43. Crown debts thereafter incurred, no longer bind the lands of the obligor as theretofor.

The Schedule above referred to.

No. of Instrument.	Date of Instrument.	Instrument.	Penal Sum.	For what purpose executed.
7907.	29th May, 1847.	Bond.	£500.	Surety for A. B. Custom's Officer. Division Court. Clerk or other Officer.
8111.	25th Jan., 1850.	Bond.	£1000.	The like.

FORM OF ADVERTISEMENT.

SEE SECTION 12 OF THE ACT, AND ORDER NO. 13 OF 1867.

In Chancery:

In the matter of*

Notice is hereby given, that John Thomas, of the City of Toronto, Esquire, hath made application to the Court of Chancery for a Certificate of Title to the above mentioned property, under "The Act for quieting Titles to Real Estate in Upper Canada," and hath produced evidence, whereby he appears to be the owner, (*describe the interest, as it will be set out in the Certificate of Title*), wherefore, any other person, having or pretending to have any title to or interest in the said land or any part thereof, is required on or before day the now next ensuing to file a statement of his claim in my office, and to serve a copy on the said John Thomas, or on his Solicitor, in this matter, at his

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* The Referee prepares the advertisement, see Order 13 of 1867. He is not bound by the heading given by the Petitioner in his petition, if he thinks it does not sufficiently give notice to the world, and he should act accordingly.

office, in the city of London, (*or elsewhere as may be*), and in default, every such claim will be barred, and the title of the said John Thomas become absolute and indefeasible at Law and in Equity, subject only to the reservations mentioned in the 17th Section of the said Act therein mentioned, numbered and to the following charges and incumbrances.*

To be inserted in the Canada Gazette on the 1st and 15th days of next, and in the on the 8th and 23rd days of the same month, or on the day of publication, in the week ending nearest to those days, and to be put up and continued on the door of the Court House of the County, and in some conspicuous place in the Post Office nearest to the lands. (See Order 13.)

Dated this day of 18

(Signed), _____

Referee of Titles.

FORM OF NOTICE.

In Chancery:

In the matter of

by direction of of the

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* If a petitioner desires that charges and incumbrances should not appear in the advertisement, at his request they may be omitted, but in such case the owners of the charges or incumbrances must be served with a notice by mail or otherwise, stating that by direction of the Referee, their claims are excepted as set forth in the Petition, (*and mentioning to what extent they are admitted as existing*). See the form below.

A copy of this notice must be sworn to as mailed (with the address to which mailed) and produced to and filed with the Referee.

Referee in this matter, you are hereby notified that of hath made an application to the Court of Chancery for a Certificate of Title to the above property, subject to your claim, (*as set out in the petition*).

PROOFS AND EVIDENCE.

§. §., 9, 10, 11.

It is impossible in a work of this nature to do more than refer to the text books on the subject. The practitioner must not suppose that because great latitude is allowed as to proof and the Referee under section 11, if dissatisfied with the evidence produced, is to refer the case back, that this will warrant a loose or careless attention to the proof; such a course may materially affect the costs under sec. 23 and the conduct of the Referee in case the evidence be insufficient after he has once, under section 11, referred the case back. When a case has been fairly got up in the first instance the Referee or inspector will probably give the applicant the benefit of his advice and assistance on any difficult point, and give every reasonable opportunity to clear it up.

Apart from the ordinary works on evidence applicable in cases before the courts, the following may be referred to, Dart on Vendors, the chapter on the Abstract, especially that part relating to the verification: so also Sugden on Vendors, chapters 10 and 11., 13th Edition, Hubback on Succession—Lee on Abstracts—Coventry on Conveyancers evidence—Atkinson on Titles.

It is of frequent occurrence that title deeds are said to be lost or destroyed and the party claiming under them desires to give secondary evidence of the contents by memorial or otherwise.

In such case proper evidence of search in the proper quarter must be given or evidence of destruction, before the secondary evidence can be received. When this evidence is given the question frequently arises how far the memorial signed by the grantor or grantee with proof of its execution is good secondary evidence. As to this see Hayball v. Sheppheard 25 Q. B. U. C. 536.; Fields v. Livingston 17 C. P. U. C.; Russell v. Fraser 15 C. P. U. C. 375 and the cases in those cases referred to. It is always important, but sometimes essential, especially if the memorial be executed by the Grantee only, to show that possession has gone with the deed.

Where the Patent is not produced there must be produced an exemplification or certified copy. (The latter costs least.)

Tne following extracts from Hubback on Succession should be referred to in questions as to evidence, and remarks p.p.

In conclusion, it may be repeated that every thing should be prepared and sent perfect to the Referee at one time, as if any matter requisite to support the application be wanting, he is not bound to receive the papers, and if the proofs and evidence be defective, it occasions delay and expense and additional fees to the Referee. See Rule.

HUBBACK ON THE LAW OF SUCCESSION.

Part I., Chap. 3, P. 62.

PROOF OF TITLES IN CONVEYANCING.

Evidence of testate and intestate succession to property is required not only in adverse or active proceedings to establish claims by parties out of possession, but also for the purpose of proving to the reasonable satis-

faction of purchasers the titles of vendors of property which has been so acquired or transmitted. The subject matter of the evidence is of course the same on both occasions; but the difference in the objects of it, and the modes of examining it, has given rise to several variations between the practice of Conveyancers and that of the Courts, both in regard to the admissibility and sufficiency of such evidence. The particular discrepancies will be more conveniently stated under the head of the species of facts to which the evidence relates, and the general distinctions only will be here adverted to.

In weighing the sufficiency of evidence, the practice of Conveyancers is more strict—in determining its admissibility, more lax—than that of Courts of Justice. The former seems to be an effect of the difference in the position of the parties; the latter, of the difference in the powers and functions of those by whom the evidence is judged.

The purchaser in *bonâ fide* transactions, by the mere possession of his purchase money, shews and offers to pass an indisputable title to it; whilst the title to land not appearing by possession, he cannot have the same assurance of the vendor's right to the equivalent bargained for. The certainty of a good title which he may acquire, is, according to Lord Hardwicke,* a moral, and not a mathematical certainty. The familiar rules, that though he is not to object to a bare possibility, he will not be compelled to accept a doubtful title,† leave it to be defined what objections suggest mere possibilities, and what suggest doubts. This much seems to be settled; that higher evidence is neces-

* 2 Atkins, 20.

†Sug. V. and P. 339, 351, 9th Ed.

sary than such as would merely prevail in ejectment. There are erroneous judgments upon defective or unsound evidence which may be cured by another ejectment; but if the doubts upon a title should after completion ripen into defects, the purchaser may find it impossible to regain the position which he held before the contract. What Lord Eldon observed of Legitimacy seems to be true of any other matter of fact expressly or impliedly alleged on the abstract: that a jury may collect the fact from circumstances, and yet the court would not compel a purchaser to take the title merely because there was such a verdict. The court will weigh whether the doubt is so reasonable and fair that the property is left on his hands not marketable.* The rule applies generally to presumptions of fact, which conveyancers are slower of raising than Courts of Justice. Thus a seven years' absence without tidings, though it prevails as evidence of death in ejectment, is clearly insufficient as between vendor and purchaser† and several other illustrations of the rule will appear in the second part of this work.

Besides the greater difficulty of retracing an erroneous step, there exists another cause of difference from forensic practice, the more extensive office of Conveyancer's evidence, which is to afford reasonable satisfaction to the purchaser, that the title is good against all the world, and not merely like that of evidence in litigation, that it is sufficient to prevail against certain contending parties. In this particular a Vendor's evidence resembles that of a claimant of peerage: it is not to shew a better or preferable title relatively to any other, but to prove that the title is certainly and exclusively in the party asserting it. For this reason, the numerous de-

* S. Ves. 328.

†See part 2, c. 2, page 185 Hubback.

cisions of the House of Lords, cited (*most of them for the first time*), in this work, upon the sufficiency of certain pieces of evidence to establish certain facts, as failure of issue, marriage, legitimacy, identity, are it is apprehended authorities important to the Conveyancer.*

Again, Conveyancer's evidence is for the most part necessarily *exparte*. A Vendor may therefore be required to furnish evidence which would be elicited by adverse proceedings, to prove or disprove facts, which, if he were a party litigant, it would be the business of his opponent to negative or establish. The heir in ejectment, either by or against him, or as a party to a suit in equity, need not adduce proof that his ancestor died intestate, it resting with his adversary to prove the affirmative fact of a will, if there is one.

VENDOR'S LIEN.

Vendor's lien† exists for the purchase money unpaid, and is in the nature of a charge on the property as against the vendee, and all claiming under him, except purchasers of the legal estate for value without notice. Thus the absence of the receipt endorsed for the purchase money is considered notice that the purchase money has not been paid, even though the receipt has been acknowledged in the body of the deed.

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*These decisions have the peculiar value of being judgments by the Law Lords upon the *sufficiency* as well as the admissibility of evidence, Lord Eldon observed, in his spee[illegible] on the Banbury case, that their Lorships sat there as judges, and also that they performed the functions of a jury.

†For the law, see Mackreth v. Summons, 1. White and Tudor's Leading Cases, Sugden, and Dart on Vendors.

The Solicitor therefore, should, in case of absence of an endorsed receipt, furnish some evidence of payment, or that for any other reason the lien does not exist.

As a general rule, the burden is on a purchaser of shewing that the lien for unpaid purchase money does not exist, and the mere fact of taking mere personal security as a bond or note for the purchase money is not of itself, without more, sufficient evidence of an intention to abandon the lien. A mortgage on the land sold* (or on other lands) for the purchase money is an abandonment of the lien.

The lien may be barred by the Statute of Limitations. Parol evidence is admissible to show that the lien was abandoned.

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* Baldwin v. Duigan, 6 Grant.

ANALYSIS TO BE MADE BY THE MASTER ON INVESTIGATING A TITLE, WITH NOTES INTENDED FOR HIS ASSISTANCE.

Lot No. 6, and South half of Lot No. 5, in the first concession of the Township of Vaughan, in the County of York.

JOHN THOMAS, *Petitioner.*

HENRY SCOLLER, *Solicitor.*

No. 1. Petition filed 1 June, 1857.	Date of filing with Referee.
2. Affidavit.	
3. Schedule of Papers.	Must be signed by petitioner, and marked as Exhibit by Commissioner.
4. Certificate of Solicitor.	
5. Registrar's Abstract.	Must be carried down to Registrar's Certificate that petition is filed.
6. Sheriff's Certificate—No Writs of Execution.	
7. No Sales for Taxes, or under Executions.	See as to these Certificates the several Forms ante.
8. Statement of facts.	This may be made by either the petitioner or his Solicitor.
9. Affidavit as to Cr. Debts, Proceedings with any Affidavits as to possession, dower, &c., or other incumbrances.	This must specify the purpose for which the Bonds were executed.

INSTRUMENTS OF CONVEYANCE.	These Notes are for the purpose of drawing the Referee's attention to the several proofs required.
6th April, 1797.	
A. The Crown to Peter Lee, in fee.	If not produced, a certified copy must be obtained and produced before the papers are laid before the Referee.
28*th April*. 1845.	
B. Timothy Hespeler to David Scott, in fee.	The title must be deduced from the Patentee to the first grantor, say Hespeler, and possession must be shewn in Hespeler and the subsequent owners. If the deed was executed by Attorney, the power must be proved, and Hespeler must be shewn to be living when the deed was executed under the power, and that he was not married, or that his wife's dower was barred.
C. David Scott to Timothy Hespeler, redeemable.	Means that it was a mortgage.
29*th June*, 1867.	
CC. Timothy Hespeler to John Thomas, Petitioner.	This Deed of Release merged and extinguished the mortgage.

ANALYSIS OF TITLE, &c.—(*Continued.*)

Instruments of Conveyance.	These Notes are for the purpose of of drawing the Referee's attention to the several proofs required.
10th June, 1845. D. David Scott to Samuel Reed, in fee.	Was Scott married, if so, the dower of the wife must be shewn to be extinct, or it must be barred.
Same date. E. Reed and ux to David Scott, redeemable.	
2nd February, 1847. EE. David Scott to Robert Cathcart, Assignment.	If a mortgage is stated to be discharged, copy of discharge certified must be produced.
1st June, 1846. F. Reed devised to Ross and others, as Trustees, with power to sell.	
3rd February, 1847. G. Ross and others, Trustees, sell and convey to Andrew Gray, in fee.	If deeds are not produced, they must be so, or good cause shewn.
Same date. H. Gray and ux to Ross and others, redeemable.	
27th December, 1849. I. Ross and others to Andrew Gray.	
27th April, 1850. K. Gray et ux to Francis Green, in fee.	

The following is a further form, the first column giving the dates and parties, the second the remarks and defects, and the third shewing how cleared up or disposed of. It will be found advisable to write *across* a foolscap sheet so as to give sufficient space, and to allow more space for the second and third than for the first column.

PARTIES, DATES, &c.	DEFECTS, REMARKS.	HOW DISPOSED OF.
1*st January*, 1840. A. Copy of Patent to John Doe, in fee.	Not certified as copy.	Certified copy produced.
6*th January*, 1841. B. Devise in fee, John Doe to Richard Roe.	Attestation clause does not shew how will executed.	Heir at law has executed confirmation.—See Deed Letter.
10*th June*, 1850. C. Certified copy by Registrar of Memorial, Richard Roe to John Dunn, in fee, signed by grantor, and of affidavit of execution.	No evidence of proper search for original instrument.	Affidavits of A. B and C. D. of proper search.
1*st June*, 1960. D. Robert Doe to John Dunn, in fee—Confirmation of devise.		

NOTICE TO A PERSON APPARENTLY INTERESTED.

SECTIONS 14, 19, 20, AND ORDER NO. 14 OF 1867.

In Chancery:

In the matter of (*see note, p. —*).

Take notice that John Doe, of the City of Toronto, Esquire, hath made an application to the Court of Chancery for a certificate of his Title to the above mentioned property, under "The Act for quieting Titles to Real Estate in Upper Canada," claiming to be entitled thereto as (*set out as in petition*); and take notice that if you claim any interest therein you must lodge your claim in writing, stating the particulars thereof, at my chambers in , on or before the day of , now next ensuing, and serve a copy on the said John Doe (*give the address*) or Richard Roe, his Solicitor, at his office in (*give the address*), and, in default thereof, any claim, right, or interest you may have therein at law or in equity will be for ever barred and extinguished.

Given under my hand this day of 18

Referee of Titles.

To (*name the parties to be served, with their address*).

ADVERSE CLAIM.

SECTION 19.

In Chancery:

In the matter
A. B. of (occupation)

claims to be owner of the said lands (*or of part of the said lands*) described as follows:*

(Signed), A. B.

or D., Solicitor for A. B., give address.

This should be filed with the affidavit required by Section 20, with the Referee who is acting. It is advisable at the foot to add the Post Office address.

AFFIDAVIT VERIFYING ADVERSE CLAIM.

SECTION 20.

In Chancery:

In the matter of, (*as in notice to file*).

I, A. B., of make oath and say, that to the best of my knowledge and belief, I am the owner of the estate (*or interest*), which is claimed by me in my notice of claim in this matter,† now produced to me marked with the letter A, subject only to, &c., (*as the case may be*).

MEMORANDUM OF FINDING OF MASTER.

SECTION 20.

Memorandum of finding of Master on defective proofs of Title, under order No. 12, to be delivered to the Petitioner, or his Solicitor.

In the matter of Lot &c., &c.,

I have perused this Title and I find the proofs thereof

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* And he so claims, as the mode of the claim can be framed from the form of claim of an applicant, see ante form of petition.

† This should be referred to as an exhibit and marked by the Commissioner.

defective in the following particulars, (*set them forth shortly, in some such form as the following*).

1. The Dower of Mary, the wife of James Harris, does not appear to be effectually barred she not having executed the deed or not having been examined before a Judge or Magistrates, no receipt for consideration money is endorsed on Deed from Jones to Smith, and no evidence is given to meet the difficulty.

3. The dischargeof the mortgage to Henry Brock is not produced.

4. There is no evidence that Isaac Brock was living when his conveyance by Attorney to John Johnson was executed.

5. The will of Thomas Brock has not been produced.

6. It is not shown that John Ross was not married when he conveyed.

7. The Estate descended to Mary the wife of John Gray, as heiress of Thomas Gray, who became the wife of John Brigham. She conveyed, and the husband did not join; by this conveyance nothing passed; if the husband be living a new conveyance must be obtained, or if she be dead her heirs must convey, and the husband if living must release his Tenancy by the Curtesy.

8. The will of Abraham Oldham does not seem to pass a Fee but to create an Estate Tail and this must be barred. (See Cons. St. C. 83).

9. There is no proof of the heirship of Joseph Styles.

A. B. Referee.

3rd January, 1868.

BILL OF COSTS OF PETITIONER.

This bill of costs is intended merely to serve as a guide to the Profession, and that in simple cases only.

In Chancery:

In the matter of, Lot No. 9, on the 3rd Concession of the Township of Oro.

The Petitioner s costs in obtaining Certificate.

Instructions for Petition	$2 00
Drawing petition per fo	0 20
Copy to file	0 10
Attending Registrar to bespeak, and for Abstract of Deeds and copies of Memorials of such as are not held by Petitioner	1 00
Paid Registrar's Fees	
Attending Sheriff for Certificates	1 00
Paid Sheriff	
Attending to search for Crown debts against Crown debtors	
For each search	0 50
Paid Clerk of Queen's Bench for each search	0 50
For every necessary Affidavit, as to Crown debts, dower, possession, loss of deeds, or other matter in support of Title, per fo	0 20
For each copy, per fo	0 10
Attending to swear, for each, 50 cents, paid 20 cents	
Attending County Treasurer for Certificate, Taxes paid	0 50
Paid for same	
The like on Township Treasurer, where necessary	0 50
The like on Collector, where necessary	0 50
Drawing Petitioner's Affidavit and copy, per folio	0 20
Attending to swear, 50 cents, paid 20 cents	
Drawing state of facts, where necessary, see Statute, sec. 5., sub-sec. 4, per folio	0 20
Copy thereof, per folio	0 10
Drawing Schedule of Deeds and paper, per folio	0 20
Copy for Referee	0 10
Drawing certificate of Solicitor or Counsel as to state of title and fee thereon	2 00
(To be increased according to the nature of the case.)	
Writing, with foregoing Petition to Inspector, 50 cts. stamp thereon for registration, 10 cents	0 60

Paid Inspector ...	$8 00
Attending Referee with deeds and papers and comparing same with Schedule	1 00
Attending Referee for advertisement and notice for service on parties who may have claims	0 50
Copy of advertisement for Gazette	0 30
Writing with and forwarding	0 50
Paid for insertion and for Gazettes	
Copies for local newspaper and letter therewith, [if ordered by Referee	0 50
Copy to affix to Court House door	0 30
Paid affixing	
Copy to be affixed in Post Office	0 30
Paid getting same affixed	
Affidavit as to insertion in Gazette, local newspaper, and as to affixing same on Court House door and at Post Office, each	0 50
Attending to swear, each	0 50
Paid swearing and Exhibits	
Copy notice to serve on each party [as directed]	0 30
Attending Sheriff with same to serve	0 50
Paid Sheriff service and for mileage, 10 cts. per mile.	
Affidavit of service on each party, 40 cents, and oath and Exhibit	
Attending to file affidavits with Referee	0 50
Attending Referee when satisfied with Title to forward papers to Inspector	
Attending to remit stamps on Registrar's fees for Registrar's certificate	0 50
Paid for same	
Attending County Registrar with certificate for registration	
Paid his fees	
Attending for same when registered	
Paid postages throughout the matter	
Bill of costs and copy	1 00

APPEAL.

Set down for Appeal and serve Notice before Report has become absolute. It is not necessary that the Appeal should be heard within the 14 days. If the Report has become absolute, the Court may under special circumstances give leave to appeal—vide order 19, Sec. 1.

The Notice of Appeal must contain the Appellants exceptions to the Report concisely. All points taken on the Appeal must be raised before the master on settling the Report. The Court may hear new objections, subject to the costs of the Appeal.

If the Appeal fails the Appellant may re-hear by setting down, on *precipe* and depositing £10 in Court for any of the re-hearing terms within six months after passing or entering order made on Appeal from the Report, and giving seven days notice of setting down.

The cause must be set down at least ten days before the term.

The cause may be carried to the Court of Error and Appeal at once.—See Con. Stat. U. C. Cap. XIII. and the general order of Court in that behalf.

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